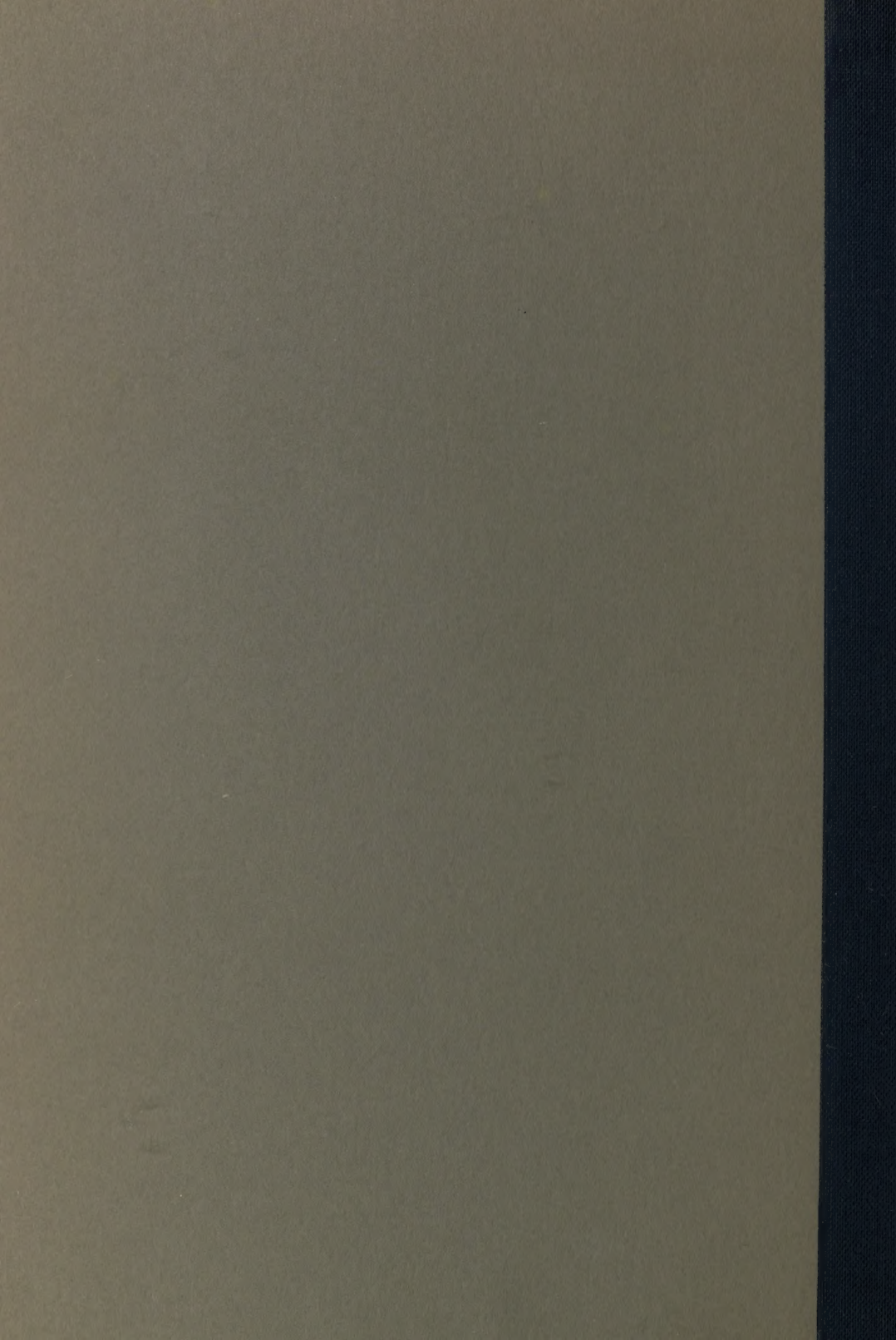


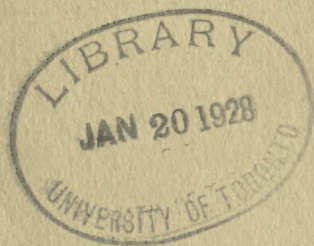
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Railway regulation

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RAILWAY REGULATION

ROBERT MATHER



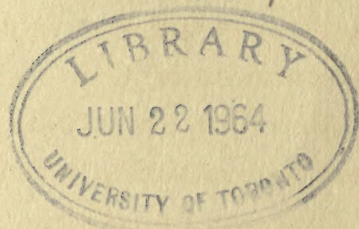
A SPEECH DELIVERED BEFORE
THE TRAFFIC CLUB OF PITTSBURGH
FRIDAY, APRIL 3, 1908

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RAILWAY REGULATION

We meet the transportation question in its historic home when we come to Pittsburgh to discuss it. The name of your city preserves in constant recollection the fame of the great British statesman whose genius and tenacity secured and preserved first to England and through her to us, the vast commercial opportunities of this continent. When England first awoke to a realization of those opportunities she found them already seized by the French. The voyageurs of France, whose frail canoes were threading the lakes and rivers of unknown regions from the St. Lawrence to the Gulf, while the more conservative Englishman was content with his narrow strip of Atlantic coast, were something more than mere scouts of adventure. Their wanderings were, in fact, voyages of conquest, and wherever their shallow keels cleft the waters of river or of lake there was set up the claim of the King of France to dominion over all the territory that those waters drained. Not in mere kingly arrogance nor in assertion of empty power were these pre-

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tensions made. Back of them was the solid substance of trade. The waterways supplied the only means of conveyance known to the science of that age, and it was the meaning and purpose of the Frenchman's claim that the nation which had discovered these highways of commerce should control all of the territory that those lines of transportation served. So it came to pass that the French flag flew, in theory at least, over all the land from Quebec to New Orleans, and from the crest of the Alleghanies to the western headwaters of the untraced tributaries of the Mississippi. It was the elder Pitt who drove that flag from North America and thus saved to Anglo-Saxon enterprise the exploitation of this rich domain. And it was here, where Fort Pitt confronted Fort Duquesne, that the struggle between the English and the French was most signally typified.

One of the factors in that fight was George Washington, commissioned by the royal colony of Virginia to save from French aggression her priceless possessions in the great Northwest. Young as he was when fighting the battles of Pitt against the French in disastrous Fort Necessity, Washington caught the meaning of that war. It was, that control of the avenues of transportation of a country is essential to the effective asser-

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tion and maintenance of sovereignty over that land. And when, thirty years later, he sheathed the sword that, in turn, had driven the English from the continent, his first impulse was to turn again to the task that had taken him as a youth to Pittsburgh. Virginia laid sovereign claim to the vast and undefined country known as the Northwest Territory. Her claim, though neither England nor France remained to dispute it, was menaced by the fact that the commerce of her vast possession, following as it must the natural watercourses as the only means of transportation, could reach the markets of the world only through a Spanish port at New Orleans. It was beyond the dream of the war-wearied colonies to dislodge by force from American soil this last remnant of European power. So the engineering genius of Washington undertook to divert by canal the tonnage of the Northwest Territory to the American ports on the Atlantic.

Thus was conceived and finally constructed the Chesapeake and Ohio Canal. All that saved Washington from becoming a promoter and builder of railroads was the fact that the inventions of Watt and of Stephenson had not yet been made.

Washington's was an interstate system of transpor-

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tation, and he early saw that the building and operation of his line of canals might be vastly hampered if not defeated by the conflicting regulations and grasping impositions of the separate colonies through which it should pass. He suggested that Virginia and Maryland should make an agreement on the subject, and commissioners appointed by the two States for that purpose met Washington in his home. How many of us have realized, on our patriotic pilgrimages to Mount Vernon, that the railroad lobby had here such high and respectable birth? Imagine, if you can, the Interstate Commerce Commission of to-day going to the home of a railroad president to discuss with him the regulation of his railroad! A difficult feat for the imagination—made no easier by the reflection that the railroad presidents of to-day, if high authority is to be accepted, are not George Washingtons.

But things and men were different in those early days, and Washington, having got this first Interstate Commerce Commission under his hospitable roof, moulded their regulations to fit his plans. In his house, under his direction, they drafted a compact between their respective States for the regulation of his canal. And, since the canal must pass through Pennsylvania

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in order to unite the waters of the Ohio and the Potomac, he persuaded the commissioners to invite the cooperation of that Commonwealth in the plan for uniform regulation that he desired. Then it occurred to him that a single system of duties and other commercial regulations, and a uniform currency, would promote the interests of the canal, and the commissioners tacked these suggestions to their prepared agreement and sent them all on for adoption by their legislatures.

Great things came of that first conference between this representative of the carrier interests and that pioneer Interstate Commerce Commission. The Maryland legislature adopted the agreement made by the commissioners, and, in advising Virginia of the fact, not only advanced Washington's suggestion that Pennsylvania be invited into the compact, but of its own motion added Delaware to the list, and suggested a conference of all the thirteen Colonies to agree on uniform duties and commercial regulations. This was the first effective expression of the growing desire that the feeble confederacy should become a nation. Virginia, already quick with the same conception, seized upon the suggestion and invited the Colonies to send commissioners to a meeting in Annapolis. That meeting, though

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it failed as a convention, adopted an address to all the States, prepared by Alexander Hamilton, which convened the Constitutional Convention at Philadelphia.

Thus, out of Washington's early experience at Fort Pitt, out of his conviction there formed, that control of its highways of traffic is the life of a nation, out of his effort to build a canal and his willingness—nay, his desire—that this instrument of interstate commerce, through whatever States it ran, should be uniformly regulated by a centralized government, sprang the movement that resulted in the adoption of the Federal Constitution. Out of the needs of commerce, therefore, the nation was created. And the man who, more clearly than all others of his time, saw the relation between commerce and the prosperity and permanence of the nation, became its first and greatest president, and left to posterity an enduring reputation for patriotism and wisdom.

I wonder what Washington would think if he could come back to Pittsburgh to-day, and find that the river, the control of whose traffic inspired his activities as a soldier, an engineer, and a statesman, carried annually into and out of the city that has grown up around his stockade, over twelve million tons of freight. And

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what would be his wonderment to learn that this imposing commerce was but an incident in the activities of the community, and that, by an agency undreamed of in his times, more than a hundred million tons of freight are each year carried past Fort Pitt to or from the Atlantic ports which his valor had placed under American control and the great Northwest which his wisdom had saved to the new Republic? Would he not feel that his wars had been well worth while, that his activities as the pioneer promoter of the business of the common carrier had been rewarded, and that the commercial interests of the country, whose needs had largely suggested the formation of the Federal Union, had justified, in magnitude at least, the stately fabric of government which he and his compatriots had erected?

It is not, however, because of the extent of Pittsburgh's commerce, vast as it is, nor because of its historic associations, absorbing as they are, that a discussion here of the subject of railway regulation peculiarly appeals to me. It is rather because here, where a greater tonnage moves than anywhere else in the country, there is less of controversy between shipper and carrier than anywhere else in the land. I am told that here, in the country's nerve-centre of traffic, out of all the multiplied

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millions of transactions between merchants and railroads, there has never been found a cause of complaint to present to the Interstate Commerce Commission. This does not mean that the railroads have never been wrong, or unreasonable, or exacting, or inefficient, or that the shipper has never demanded what he ought not to have received. I have no doubt that, in the weakness of human nature, many of these things, on both sides, have occurred. But there has been found a way in Pittsburgh to move an unparalleled tonnage in spite of all such discouragements and conflicts, with satisfaction to both shipper and carrier and without the intervention of courts or commissions. I hold that fact to be of great significance in these days of clamor for increased regulation of the business of transportation, and I deem it worthy of our serious thought.

I appreciate fully that, in this respect, no miracle has been wrought in Pittsburgh. I yield to you gentlemen of the Traffic Club high praise for the achievement I am extolling, but I still believe you to be an ordinary lot of men, uninspired except by the spirit of good sense. I understand that you proceed upon the very human and rational theory that the interests of producer, transporter, and consumer are alike and

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mutually dependent; that without production there can be no transportation; and that unless the combined efforts of producer and transporter can lay down your product before the consumer upon a basis that the consumer can afford, your commercial activities are doomed to failure. So when you find that a consumer or a community that in view of all other commercial conditions ought to be taking your product, is not taking it, you look for the cause in the rates or practices of the railroad that carries your product to that place. If you find that a change in rates will secure the customer or the community, or that an improvement in train service or some addition to the carrier's facilities will move the traffic, instead of filing a complaint at Washington, you go to the railroads direct and ask them to help you, and at the same time to help themselves, by making the change that will produce the result. And so willingly have the railroads met and coöperated with you that, in the working out of the myriads of such problems that your teeming commerce has presented, you have not yet been denied a request the denial of which could give you ground for legal complaint.

I believe that this Pittsburgh plan of conference and coöperation between railroads and shippers should

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be given wider scope before we become finally wedded to the alternative plan of governmental compulsion. What you have done in conducting your manifold and stupendous dealings with the railroads, not only without clamor for additional restrictive laws against them, but without even invoking such laws as exist, can and ought to be done elsewhere. More than this, not only the carrier and the shipper, but the representatives of the regulating power of the Government should meet on this platform of mutual confidence and coöperation. It is perfectly feasible in every commercial center like Pittsburgh for the railroad traffic associations to hold open meetings with the representatives of the shippers, to make up their docket of subjects to be acted upon not only from the requests of their members, but from the suggestions of their customers, and to place the docket in the hands of all entitled to attend a reasonable time in advance of the meeting. It is further not only practical, but in my judgment highly desirable that a member or a representative of the Interstate Commerce Commission should not only attend those meetings, but even preside over their deliberations and umpire their disputes, with possibly some provision for appeal to the Commission itself. Thus would we revert to the ex-

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ample of Washington when he and the colonial commissioners met in peace and not in strife to solve by mutual helpfulness the national problem of transportation. And thus the regulating power would get at first hand and through touch with the vital facts, its knowledge of the complicated commercial and social conditions which every contested rate question presents. It would be dealing with the parties at a time when, with open minds, both are striving to reach a point of mutual advantage, rather than when, as opposing parties to a complaint, each is trying to get the better of the other. Under such a plan of coöperation, perfectly consonant with provisions of existing law, the regulating power would become, as it ought to be, an instrument of conciliation, and the fruit of its exercise would be commercial peace. Through such an agency the difficulties in the way of uniform classification would be removed, a national and harmonious system of rates established, mystery taken out of traffic problems, and the path made smooth to the day when a stamp purchased from any carrier and affixed to a parcel of merchandise will carry the parcel to its destination, wherever it may be, as surely and unostentatiously as the postage stamp now performs its lowly task. I believe

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the railroads would welcome and support such a scheme of coöperative regulation of their rates and their traffic.

I fear that the public but dimly realize the willingness of the railroads to accept and to further the reforms in transportation methods that recent changes in our laws and in their administration have produced. The effective prohibition of rebates and of free transportation, and the elimination of the many forms of discriminations which expressed the subservience of the carriers to the large shippers mark the emancipation of the railroads from a slavery to abuses to which none of them would return. Most of them are not only willing but anxious to coöperate in any policy of reasonable regulation that will maintain their business on the higher plane of morality to which it has thus been forcibly lifted. And I think that spirit of coöperation should be reciprocated by the regulating power.

It continues, however, to be the claim of the railroads that they shall not be so regulated as to be prevented from earning interest on their bonds and reasonable dividends on their stocks. And they insist that not only they and their security-holders and their employés, but the nation at large is interested in their continuing ability to earn those charges and dividends. For, in the

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absence of such earnings, their securities become discredited, they are in consequence unable to provide the added mileage and increased facilities which the growing commerce of the country demands, and thus they fail to support not only their own normal quota of employés, but millions of others of our citizens who depend upon the many industries that the ordinary activities of our railways keep in operation. The dark days through which we are passing lend telling weight to this contention.

The insistence of the railroads upon this position involves no criticism of the policies of the President. Indeed, he admits that the railroads should earn their interest and charges, and concedes that, generally speaking, they are not over-capitalized. His policies, however, do not concern themselves, *primarily*, with the conservation of the revenues of the railroads. I understand his attitude in this respect to be expressed in the Scriptural injunction: "Seek ye *first* the Kingdom of God and his righteousness; and all these things shall be added unto you." The practice of the railroads in the past, it must be confessed, has been to reverse the order of this text; to seek first their revenues, and to await with patience the coming of the Kingdom of God. It is not surpris-

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ing, therefore, that they take hold of the first part of the program of this new dispensation not only with awkwardness, but with some fear that the promise of the latter part may not be realized. It is a fact, however, that the first enforced steps taken by the railroads on the path of righteousness marked out for them by President Roosevelt have tended to increase rather than to diminish their revenues. The limitation of the passenger privilege has clearly swollen the passenger receipts. The enforcement of the prohibition of rebates has not only turned our traffic-men—and the traffic-men of the shippers, too—from a life of daily crime, but has turned money into our treasuries. So clearly is this true that the chief political opponent of the President makes it his daily taunt that the only regulations the Administration has actually enforced against the railroads have added to their revenues—as though that in itself were a crime to make the blood of the people boil.

But the statesmanship that rises no higher in its treatment of this great question than to see good in no regulation save that which takes money from the railroads, either lacks intelligence itself or assumes want of intelligence in the electorate to which it appeals. And I believe that the people could be led to see the essential

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identity of the prosperity of the country with that of the railroads, and the absolute dependence of the one upon the other, if only a voice could be found to raise that cry.

I am well aware that such a voice would find difficulty in making itself heard above the present clamor for further regulation. The public temper, inflamed by recent revelation and denunciation of corporate crimes, may not yield readily to the suggestion that it curb its own excesses. The state of spiritual exaltation incident to the accomplishment of great moral reforms with difficulty bends to the working out of practical problems of business. The greatest moral uplift in history—the French Revolution—dealt unwisely, to say the least, with the new social and economic situation which it produced, and cost France much in blood and in treasure that a calmer frame of mind and a different leadership would have saved to her. We stand in peril of making like mistakes if the issue is to be, in the coming campaign, which party will go to the farthest extreme in restraining the freedom and restricting the revenues of the railroads. And that peril can only be escaped by offering to the intelligent choice of the people, against the program of the radical and the demagogue, a plan of rational regulation which, while holding fast to those

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ideals of integrity and morality by which the President insists that the business of the country shall be judged and controlled, promises just as clearly that neither the earnings nor the credit of the railroads shall be destroyed. There are voices in the land that could make such an appeal without peril of losing their hold on the conscience or the confidence of the people. And the admitted economic facts by which the appeal could be justified would, in my judgment, in times like these, convince the intelligence of the voters.

Such a program should oppose the regulation of railroad rates through the specious device of a physical valuation of railroad properties. The argument in favor of this suggestion is founded on the assertion that railroad rates are unreasonably high. If, it is argued, a value could be placed by governmental determination upon the physical properties owned by the railroads, that valuation would express the aggregate investment on which the earnings of the roads should yield a fair return, no matter what amount of outstanding securities represent the properties or what those securities cost to original or present holders. Wholesale reduction of rates could then be made to a basis just sufficient to yield this reduced return.

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The premise of this argument is false and its conclusion immoral.

Railroad rates in this country are not unreasonably high. As shippers and consumers of freight we pay a transportation cost less than one-half that of Germany, barely more than one-third that of France, and but slightly in excess of one-fourth that of England and the other countries of Europe. Following are the figures for last year:

COUNTRY.	Freight cost per ton mile, in cents.
China10
Japan05
Russia022
Italy024
Austria0225
Germany015
France019
England026
United States0069

Besides, the cost of transportation to the actual consumer is so slight a quantity as never to disturb his thoughts except when forced upon his attention as a campaign issue. A careful writer has computed the

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amount which freight charges actually add to the cost at Pittsburgh of necessary articles of wear and consumption, and I give you some of them:

A suit of clothes—three cents;

A pair of shoes—one and one-half cents;

A man's hat—less than half a cent;

A lady's hat, trimmed for wear—less than one cent;

Muslin—one-twelfth of a cent per yard;

Flour—less than one-fifth of a cent per pound;

Dressed meats—one-fourth of a cent per pound;

Fish—one-third of a cent per pound;

Vegetables and canned goods—one-sixth of a cent per pound.

We “plead the baby act” as a nation when we cry out against the alleged over-capitalization of our railroad corporations. The State and the Nation had their opportunity, at the time of issue, to prevent the sale and consequent validation of these “watered” securities. Why was their issue not prevented? Because, as a people, we were willing to pay the price and to take the chance, in order to get the railroads built and the country developed. Well, the railroads were built and the country was developed because, by reason of this

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attitude of the people, the States and the Nation, it was possible to sell the securities thus issued in the world's markets, and, through their sale, to obtain the money without which the railroads would not have been built and the country would not have been developed. In countless cases, under all sorts of circumstances, it has been attempted to invalidate railroad bonds on the claim that the corporation got inadequate consideration for their issue—that is, that they were issued in excess of the value of the property of the corporation. Against every such attempt our courts have held, with a unanimity that attests the essential righteousness of the holding, that all such securities, no matter how flagrantly overissued, in the hands of holders for value are the enforceable obligations of the corporation and valid charges upon its properties and their earnings. The movement for a physical valuation of railroad properties seeks to accomplish, by administrative order, the invalidation of these securities which the courts deny. I repeat, such an effort is immoral.

Like all immoral acts, whether of nation or of individual, the movement for physical valuation of railroads is also foolish. The protection that the courts throw around the innocent holder of this class of secu-

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rities lies, as an essential fact, at the very foundation of the credit of our corporate securities, at home and abroad. The threat that this protection may be nullified by an executive order fixing the ultimate capitalization upon which the railroads will be permitted to earn a return, without reference to the amount of outstanding stocks or bonds, menaces all of our railroad securities. In times like these, when it is generally accepted that the one thing our industrial situation needs is restoration of the confidence of the investing public, here and abroad, in our railroad securities, how foolish it would be, by the adoption of such a policy of regulation, to justify and to confirm the suspicion with which these securities are now regarded in the markets of the world!

To those regulations which seek to place under the control of officers of the Government the administration of the internal affairs of the railroads, everyone interested not only in their prosperity, but in the prosperity and safety of the country, should protest. I do not include in this condemnation those regulations effectively designed to protect the safety of traveler and employé, or to secure to the latter fair compensation for injuries suffered through the negligence of his

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employer. In those questions the public has a direct interest which it may rightly safeguard. But when, under guise of accomplishing these public purposes, Government takes hold of the operations of the railroads in such a way as to intrude its authority between the control of the employer and the obedience of the employé, it takes a step not only unjust to the railroads, but unsafe both to the traveling and shipping public and to the state. It is universal experience that nothing tends to good service in any line of employment so much as the realization that continuance in the employment, with its consequent pay and hope of promotion, depends upon the character and loyalty of the service rendered. In the days when I worked on lathe and bench it was my effort—and no organization restrained my desire—to do more and better work than the man who stood at my side. I thought that effort expressed not only my obligation to my employer, but my duty to myself, for to it I looked for prosperity and promotion. My shopmates, too, placed the same dependence on their individual strength and skill and conscientiousness of service. And I mourn the decadence, in these latter days, of the spirit of self-dependence which that attitude produced. It is, in my judg-

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ment, one of the regrettable effects of modern labor conditions—whatever may be the compensating benefits—that there has been largely substituted for this prop of self-reliance based on good service the all-supporting arm of the union. Intelligent and unprejudiced observers of the operations of our railroads trace a definite percentage of the increased operating costs of the past few years, of the decreased efficiency in service, of the increased casualties with their resulting growth of loss and damage to freight and loss of life and injury to persons, to the slackening influence of this very fact upon the hands and brains that load and make up and move the trains. If to this there be added the assurance to the employé that no longer his employer or his union, but a paternal government prescribes the hours and conditions of his employment, the nation itself will be the sufferer, not only in the diminution of its industrial efficiency, but in the deterioration of the fibre of its citizenship.

Nor should any governmental officer or body be given power to prescribe for the railroads schedules for the movement of perishable freight, or the conditions under which they shall interchange cars with their connections. I do not see how schedules for perishable

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freight can be made without making schedules for all other trains; and I do not think that government commissions or agents should make the time cards of the railroads. If control of these intricate details of operation, and of the relations and practices that shall determine the interchange of cars at every connecting point on our 225,000 miles of railroad, be put in the hands of the commission, what remains of the work of operating the lines will be so unavoidably involved in these regulations that it might as well all be conducted from Washington. If it be answered that the purpose of these provisions is to prevent discriminations in these particulars, the sufficient reply is that existing law prohibits all discriminations, prescribes punishment therefor by fine and imprisonment, and provides pecuniary compensation for the party injured. If, as a cumulative and preventive remedy for these particular species of discrimination, it is necessary for Government to take over the operation of the railroads in these particulars, then, for the preventive protection of others who may be injured by other kinds of discrimination, the Government should operate the railroads *in toto*.

It is as a citizen, rather than as a railroad man, that I decry the growing tendency toward this kind

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of railway regulation. Every such regulation loosens, by just so much, the control of the railroad manager over the property in his charge, and lessens, in the same degree, his accountability to its owners. For the resultant decrease in earnings and increase in expenses the responsibility is shifted from his shoulders to the regulating power—the Government. Now, it is established by law and admitted in all discussion, that the owners of the property are entitled from its earnings to a fair return upon its value. There is, therefore, no escape, in logic or in morals, from the proposition that, to the extent that governmental interference with the owner's control of the operations of his railroad diminishes the ability of the property to return the fair profit to which, under the law, he is entitled, the Government must make the owner whole. In other words, if the Government is to undertake, in whole or in part, the operation of our railroads, a government guaranty must go with the act. And I don't think that is a good thing for the Republic, however soothing it might be to the railroads.

It is an interesting coincidence that, simultaneously with the effort of our Government to take charge of particular features of the operation of our railroads,

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both Mexico and Canada are working out their railroad problems on the basis of government ownership coupled with private operation. It may not be conclusive of any point in the argument, but it is a significant fact that, with this difference in the policies of the three countries, European bankers have within the past few weeks purchased both Mexican and Canadian railroad securities on a reasonable basis, while at the same time refusing to entertain on any basis the purchase of railroad securities of the United States.

A better ground for opposing this kind of railroad regulation is the conviction that, as a nation, we have no greater peril to fear than the constant interference of agents of Government in our daily practical affairs. We hear much nowadays of warfare against "special privileges." In the sense in which it is understood by those who employ it, the term has a limited meaning, and with warfare against the things thus meant I have much sympathy. But the phrase in itself suggests, and its use is intended to suggest a parallel with the French Revolution. And, as I understand history, the "special privileges" against which that bloody movement was a revolt, were the privileges conferred by a paternal government upon its meddling emissaries among the

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people. Let me repeat to you how the great German student Von Holst described to an American audience the activities of the representatives of Government who exercised these "special privileges."

"In the council, the *contrôleur général*, though not prime minister, was in a measure the center around which everything turned. His power was greater and more comprehensive than that of a modern minister of the finances. He exercised a controlling influence upon nearly everything that stood in any relation to the finances, and almost everything pertaining to administration is in some way or other connected with them. He might be properly called *the* administrator of the Kingdom; and under the *ancien régime* the administering was extended practically to everything.

"What the *contrôleur général* was for the whole State, the intendant was for its administrative subdivision, the *généralité*. He had his hand in everything, and al-

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ways in the spirit of bustling, distrustful, and presumptuous paternalism. There was nothing the intendant did not do or control. He allotted the taxes; he directed the levying of the militia, determining not only the percentage each community had to furnish of the whole quota of the *généralité*, but also who was to shoulder the musket and who could go home; he . . . took care of the maintenance of public order; he directed all the public works; he distributed what the Government appropriated for the support of the poor; he opened or shut the doors of the public workhouses to the indigent; he told the peasant how the Government wanted him to till his field and feed his cattle; he ordered bonfires to be lit, and fined those who had not gone to *Te Deum*; he advised the municipalities, which officially still enjoyed self-government, whom to elect to the municipal offices, and they never dared to have a will of their own; he alone could give permission to call a

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communal meeting; through him the community had to ask the permission of the council to spend money for any municipal purpose, . . . and often years passed by ere it was allowed to repair the rotten roof of the parsonage or the tottering steeple of the parish church. . . .

“As the Government charged itself with attending to everything, it was of course also held responsible for everything. Commanding, instructing, or at least advising in regard to everything, was it not also its duty to foresee everything up to the fancies of fashion, the whims of trade, the freaks of the weather? The Government became the terrestrial Providence.

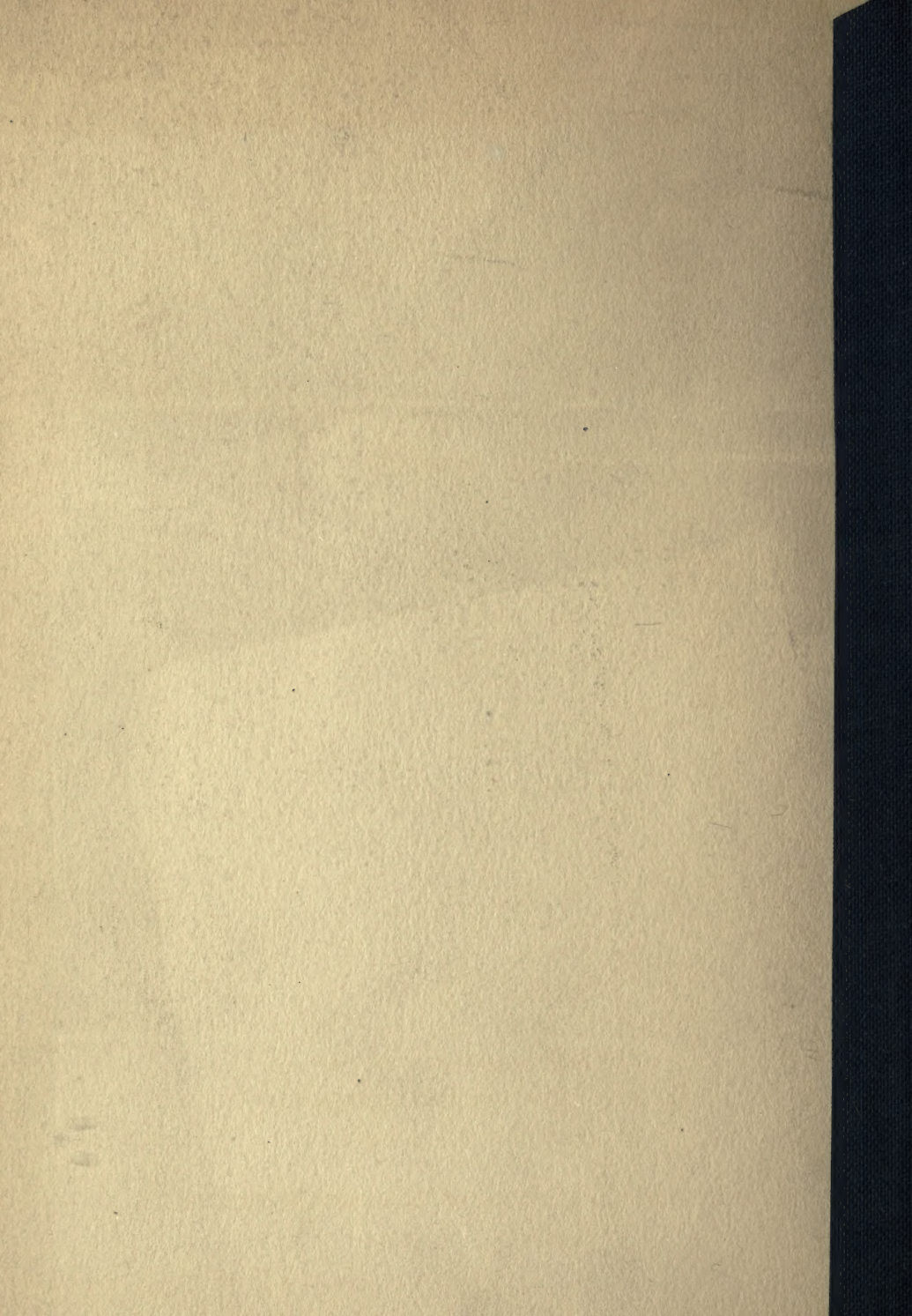
“One of the attributes of Providence is omnipresence. If we merely look at the intendants and their subordinates, who did nearly all the real governing, we get but a very inadequate idea of how far government under the *ancien régime* came up to this requirement. . . . There

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was such an innumerable host of all sorts of public officials, that one is tempted to say, whatever a man did, he was almost as sure to have some kind of a public functionary at his side, as he was to be followed by his own shadow. If the peasant brought an ox to market, the inspector of cattle presented himself; the inspector of calves looked after the calves; the inspector of swine took care of the pigs, and, if it happened to be a sow with young, he was joined by the inspector of sucking pigs."

God save us, in this country, from the inspector of sucking pigs!

THE END



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